

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-212880**DATE:** October 4, 1983**MATTER OF:** Terry J. Spayde**DIGEST:**

To extent that protest is against solicitation provision which imposed quantity limit on award unless bidder otherwise specified, protest is untimely. To extent protest is against Forest Service's rejection of protester's bid on one item, rejection was proper since award of that item would have exceeded quantity limit in its bid.

Terry J. Spayde protests "qualifications" contained on page 13 of invitation for bids (IFB) No. R5-04-83-09, issued by the Inyo National Forest, United States Forest Service (Forest Service), for seed cone collection in the Inyo National Forest. Mr. Spayde, the low bidder, contends that these qualifications led to the award of item No. 2 to the third low bidder, even though Mr. Spayde had submitted the low bid for this item, and that these qualifications do not "address themselves adequately or coherently to the purpose of the solicitation and the Schedule of Items on page 12."

Although Mr. Spayde complains of "qualifications," the only IFB qualification which he discusses is found on page 13 of the IFB as follows:

"(a) Maximum number of trees bidder will accept for award \_\_\_\_ (124 trees unless a different number is inserted by offeror)."


Bids were opened on August 5, 1983, and it was discovered that while Mr. Spayde had submitted the low bid for both item No. 1 (for seed collection from 124 trees) and item No. 2 (for seed collection from 134 trees), both described on page 12 of the IFB, he had not inserted a number in the above-quoted provision; therefore, 124 was the maximum number of trees that could be awarded to him. It was for this reason that Mr. Spayde's bid for item No. 2 was not considered.

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Our Bid Protest Procedures require that a protest based upon alleged solicitation improprieties which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983). The specifications and any objections thereto were ascertainable from reading the solicitation prior to bid opening. Since the basis of the protest was apparent before bid opening, but the protest was not filed until after bid opening, it is untimely.

To the extent that Mr. Spayde's protest is against the Forest Service's rejection of his bid rather than against the solicitation itself, we consider that the rejection was proper. Given the above clause which was left blank in Mr. Spayde's bid, and the resultant limit of 124 trees contained in his bid the Forest Service had no alternative but to reject his bid for 134 trees under item No. 2.

The protest is dismissed in part and denied in part.

for   
Comptroller General  
of the United States